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Issue Contents

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Valuing and Reporting Unharvested Crops At Death

-by Neil E. Harl*

The valuation of unharvested crops and their reporting for federal income tax reporting purposes is an important issue for estates of decedents dying during the growing season.[1] The treatment of unharvested crops at death depends upon whether the decedent was a farm operator, a materially participating landlord or a non-materially participating landlord.[2]

Farm operators and materially participating landlords

As with all property interests held at death, unharvested crops for a decedent who was a farm operator at death or a materially participating landlord at death[3] are valued for federal estate tax purposes at their fair market value as of the date of death[4] or as of the alternate valuation date.[5] That valuation (date of death or alternate valuation date) determines also the income tax basis of the unharvested crops with the alternate valuation date value relating back to the date of death.[6]

Crops that are growing crops at the date of death are "included" property and are valued at fair market value as of the applicable valuation date (date of death, date of disposition or value six months after death).[7] Property interests existing at the date of death are considered included property for purposes of alternate valuation and remain subject to alternate valuation rules even though the asset may change in form.[8] Crops that were planted after the date of death are considered "excluded" property and are not reported for federal estate tax purposes and do not receive a new income tax basis related to the death of the decedent.[9] No allocation is made on later sale between the decedent's final income tax return and the decedent's estate with all gain in excess of the date of death basis reportable by the decedent's estate or the heirs.[10]

The valuation of unharvested crops is usually determined, as of the date death, by appraisal or by discounting the harvest yield back to the date of death by taking into account the risk of crop loss between the date of death and the date of harvest by fire, wind, or other hazard and the risk that the crop because of adverse weather conditions or other factors may not reach the projected harvest yield.

Non-materially participating landlords

For landowners who are not materially participating under a share rent lease,[11] the valuation of interests in an unharvested crop at the date of death is handled in the same manner as for farm operators and materially participating share rent landlords. However, the treatment of the gains is different.

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First, growing crops and stored crops for a non-materially participating landowner are considered to be income-in-respect-of-decedent[12] as to share rents which the decedent had a right to receive at the time of death for economic activities occurring before death.[13] The portion of the proceeds allocable to the period before death is income-in-respect-of decedent and does not receive a new income tax basis at death.[14] That portion is also includible in the gross estate for federal estate tax purposes as accrued rent.[15] The remaining amount represents ordinary income earned by the estate after the decedent's death.[16] The proceeds of sale are apportioned according to the number of days in the rental period ending with the date of the decedent's death (for the income-in-respect-of-decedent amount) and from the day after death to the end of the rental period for the ordinary income to the estate.[17] The allocation procedure has been criticized by at least one commentator.[18]

Material participation is not an election

The issue of whether a relationship of a landlord to the tenant under the lease is a material participation arrangement (which means self-employment tax is imposed during life and a new basis is received at death) or a non-material participation arrangement (no self-employment tax during life but no new basis at death) is not an election, however. It is a facts and circumstances matter.[19]

This appears to be an area where the activities of an agent or employee can be imputed to the principal (the decedent-to-be) inasmuch as it has been the general rule that, unless a statute or regulation bars imputation, the activities of an agent or principal can be imputed.[20] Therefore, if a family member, for example, can be involved in management for some substantial period before death, that could convert the lease to a material participation lease.

ENDNOTES

[1] I.R.C. §§ 2031, 2033. See generally 4 Harl, *Agricultural Law* § 27.03[11][a] (2010); 5 Harl, *Agricultural Law* §§ 43.02[1][b], 43.03[1] (2010); Harl, *Agricultural Law Manual* § 5.03[1] (2010); 1 Harl, *Farm Income Tax Manual* § 2.10[3] (2010 ed.).

[2] See 1 Harl, *Farm Income Tax Manual* § 2.10[3] (2010 ed.).

[3] See. I.R.C. § 1402(a)(1).

[4] I.R.C. § 2031.

[5] I.R.C. § 2032.

[6] I.R.C. § 1014(a)(2).

[7] Rev. Rul. 58-436, 1958-2 C.B. 366.

[8] Treas. Reg. § 20.2032-1(d).

[9] *Id*.

[10] See Treas. Reg. § 20.2031-1(b).

[11] I.R.C. § 1402(a)(1). See Estate of Davis v. United States, 68-2 U.S. Tax Cas. (CCH) ¶ 9483 (S.D. Ill. 1968).

[12] I.R.C. § 691(a).

[13] Rev. Rul. 64-289, 1964-2 C.B. 173. See Davison v. United States, 292 F.2d 937 (Ct. Cl.), *cert. denied*, 368 U.S. 939 (1961). See also Gavin v. United States, 113 F.3d 802 (8th Cir. 1997) (no mention of whether lease was material participation or non-material participation).

[14] I.R.C. § 1014(c).

[15] See I.R.C. § 2031(a).

[16] See Rev. Rul. 64-289, 1964-2 C.B. 173.

[17] *Id*.

[18] 1 Harl, *Farm Income Tax Manual* § 2.10[3][b] (2010 ed.).

[19] 1 Harl, *Farm Income Tax Manual* § 2.10[3][e] (2010 ed.).

[20] See 5 Harl, *Agricultural Law* § 41.06[1] (2010).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

ESTATE PROPERTY. The debtor had established an ERISA pension plan for the debtor's business. The debtor received a favorable determination letter from the IRS that the plan was tax-qualified under I.R.C. § 401. The bankruptcy trustee argued that the funds in the plan were not qualified from exemption from the bankruptcy estate because the debtor had violated the tax rules for such plans by using some of the plan funds for personal expenses. The court did not specifically rule on the issue of the tax-qualified status of the plan but held that, even if the plan was no longer qualified under the tax rules, the plan was still subject to the anti-alienation and anti-assignment rules of ERISA and excluded from the bankruptcy estate property. ***In re* Hemmer, 2011-1 U.S. Tax Cas. (CCH) ¶ 50,153 (Bankr. S.D. Ind. 2011)**.

The Chapter 7 trustee had sought to deny discharge and to avoid preferential transfers by the debtors but the debtors reached a settlement with the trustee that required the debtors to transfer part of their farm to the trustee. After the transfer was completed, the trustee was notified by the county that the portion of the farm transferred to the trustee violated county zoning rules. The trustee petitioned the Bankruptcy Court to void the settlement agreement for mutual